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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO CREATE A JUVENILE
MECHANICAL RESTRAINTS RULE,
ARIZONA RULES OF PROCEDURE
FOR THE JUVENILE COURT

Supreme Court No. R-15-0036

**REPLY TO ADMINISTRATIVE
DIRECTOR'S COMMENT**

Juvenile Court Administrators

In his comment, David K. Byers, Administrative Director of the Office of the Courts (AOC), states that juvenile court administrators do not wish to remove the mechanical restraints from children during transportation. Additionally, some juvenile court administrators do not wish to remove the mechanical restraints from children in court because of inadequate courtroom security. The focus of these administrators appears to be upon the slim possibility that a child will attempt an escape, rather upon than the trauma that occurs each time a child is handcuffed and shackled. Infliction of such trauma is contrary to best practices.

The National Council of Juvenile and Family Court Judges (NCJFCJ) adopted a resolution that states, "The NCJFCJ supports the advancement of a trauma-informed and developmentally appropriate approach to juvenile justice that limits the use of shackles in court." NCJFCJ also proclaims that "shackling is contrary to the goals of juvenile

1 justice, as defined in the Juvenile Delinquency Guidelines to implement a continuum of
2 effective and least intrusive responses to reduce recidivism and develop competent and
3 productive citizens.” Mechanical restraints clearly interfere with the century-old goal of
4 juvenile court, to rehabilitate youth by placing them in a better position than before they
5 entered the juvenile justice system. Causing trauma by using mechanical restraints
6 when they clearly are not warranted does not place a juvenile in a better position than
7 before entering the juvenile justice system.
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9 **Juvenile Court Judges**

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11 Juvenile court judges are responsible for the safety of their courtrooms. *State v.*
12 *Chavez*, 98 Ariz. 236, 242, 403 P.2d 545, 551 (1965). The court may not lawfully
13 delegate this responsibility to others, include juvenile probation departments. However,
14 such improper delegation this already is the current practice in some Arizona counties.
15 Moreover, juvenile probation departments have created arbitrary policies regarding
16 mechanically restraining youth. Although the presumption is that youth should not be
17 mechanically restrained, juvenile probation has carved out numerous exceptions, too
18 many to list.
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21 Before a child may be restrained, federal and Arizona constitutional due
22 process protections require a hearing and judicial determination. A judge, and not a
23 probation officer, must be the one to decide whether a child serve deferred detention
24 time. *In re Richard M.*, 196 Ariz. 84, 86-87, 993 P.2d 1048, 1051-05 (App. 1999).
25 As with incarceration, imposition of restraints restricts a child’s freedom and may
26 cause psychological damage. Hence, just as judges make the ultimate decision
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1 regarding detention of youth, they should make the ultimate decision regarding
2 whether a child requires mechanical restraints during transportation and while in the
3 court room. The judge is able to weigh the need for court security against the child's
4 current behavior. As the fact finder, the judge will be able to discern what is policy
5 driven, and what is a true risk.
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7 A hearing regarding mechanical restraints need not be complex or lengthy.
8 The purpose of such a hearing would be to simply place all relevant facts before the
9 judge. The child should be permitted to present evidence of appropriate behavior,
10 and to challenge allegations regarding flight risk and threat to safety. The hearing
11 could take place moments before the child is brought to the courtroom in mechanical
12 restraints. However, the child must be afforded an opportunity to be heard.
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15 After a hearing, a judge may determine that additional security measures are
16 needed. Any measures that are ordered should be only as restrictive as necessary.
17 Thus, if the presence of additional security personnel is sufficient, mechanical
18 restraints should not be used.
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20 The children of Arizona deserve to be treated with respect and to receive due
21 process protections. Nearly fifty years ago, in a case that arose in Arizona, the United
22 States Supreme Court ordered that children receive due process protections. *In re*
23 *Gault*,³⁸⁷ U.S. 1, 30-31 (1967). Arizona must provide children the due process
24 guaranteed by *Gault*, by requiring an independent determination by the court that a child
25 needs to be restrained for safety concerns after a hearing where the child is represented
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1 by counsel. A new Rule of Procedure for Juvenile Court would guarantee due process
2 for all children and not leave it to the policies of individual counties.

3 **Conclusion**

4 Children should not be indiscriminately shackled during transportation and juvenile
5 court proceedings. The presumption must be that children will remain free of
6 mechanical restraints unless a court decides otherwise after a hearing.
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8 RESPECTFULLY SUBMITTED this 19th day of May, 2016.
9

10 /s/ Christina Phillis

11 Christina Phillis

12 Attorney
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14 Electronic copy filed with the Clerk of the
15 Supreme Court of Arizona this 19th day of
16 May, 2016,
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1 **E. Mechanical Restraints.**

2 1. Mechanical Restraints include handcuffs, leg irons, belly chains, zip ties, strait
3 jackets and any device used to restrain movement of the arms, legs or torso.

4 2. A Juvenile shall be free of mechanical restraints when appearing in Superior
5 Court, Juvenile Division, unless there are no less restrictive alternatives to
6 mechanical restraints.

7 3. Upon request of the juvenile, the court shall hold a hearing for the sole purpose
8 of whether or not to allow the use of mechanical restraints.

9 3. 4. Exceptions shall be determined on an individualized basis by the detention
10 administrator or designee or by the lead juvenile detention officer if risk of flight
11 or harm elevates during transport. Exceptions must have a documented rationale
12 of the demonstrated safety risk the child poses to themselves or others, the risk of
13 flight, and the presence or absence of court personnel assigned to provide
14 security. If a decision has been made that the use of mechanical restraints is
15 necessary they shall be the least restrictive option necessary to maintain safety,
16 security and control.

17 4. 5. The court may determine whether to restrain any juvenile due to a threat to
18 the safety, security or control of the court room.